



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 16, 1998

Mr. Patrick Christensen
Assistant City Attorney
City of San Antonio
Community & Organization Services
P.O. Box 839966
San Antonio, Texas 78283-3966

OR98-2707

Dear Mr. Christensen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 119625.

The City of San Antonio Civil Service Commission (the "commission") received a request for the following information:

1. All documents, statements, notes, exhibits, transcripts or written information presented in the arbitration case of David Moore v. City of San Antonio styled 71-390-00291-96.
2. All tape recordings and all transcripts of tape recordings made during the arbitration hearing of David Moore v. City of San Antonio styled 71-390-00291-96.

You contend that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the sample documents you have submitted, Exhibits 1 - 4.¹

¹ In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The commission must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that the requestor has appealed his suspension upheld by an independent arbitration to district court. Local Gov't Code § 143.057. You have provide this office with a copy of the original petition in that case. *Moore v. San Antonio*, No. 98CI-12021 (45th Dist. Ct., Bexar County, Tex., Aug. 17, 1998). You have shown that litigation is pending. You have also shown that the requested records relate to the litigation. *Texas Legal Found.*, 958 S.W.2d at 483. Consequently, we find that you may withhold most of the requested information under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation, e.g. Exhibit 1, the Arbitration Hearing Exhibits list, Exhibit 2, the minutes of the hearing, and Exhibit 4, the hearing examiner's award., is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). With the exception of those documents that have either been obtained from or provided to the opposing party in the litigation, you may withhold the requested information under section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Don Ballard". The signature is written in a cursive, slightly stylized font.

Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 119625

Enclosures: Submitted documents

cc: Mr. David Moore
14227 Cougar Creek
San Antonio, Texas 78230
(w/o enclosures)